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July 30, 1999

HAND DELIVERED

Magalie Roman Salas, Esq.
Commission Secretary
Federal Communications Commission
Portals II
445 12th Street, S.W.
Suite TW-A325
Washington, D.C.

RECEIVED

JUL 30 1999

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

Re: Joint Comments of Choice One Communications Inc. and GST
Telecommunications, Inc.
In the Matter of Numbering Resource Optimization, CC Docket No. 99-200,
RM No. 9258, NSD File No. L-99-17, NSD File No. L-99-36

Dear Ms. Salas:

Enclosed for filing with the Federal Communications Commission ("Commission") is an original and four copies of the Joint Comments of Choice One Communications Inc. and GST Telecommunications, Inc. Pursuant to the Commission's May 27, 1999 Notice of Proposed Rulemaking, these comments also are being submitted under separate cover to Mr. Alvin McCloud of the Commission's Network Services Division.

Also enclosed is an extra copy of this filing that we request be date-stamped and returned to us. Thank you for your assistance in this matter. Should you have any questions concerning these comments, please do not hesitate to contact me at (202) 424-7500.

Sincerely,



Dana Frix
Counsel for
Choice One Communications Inc. &
GST Telecommunications, Inc.

Enclosure

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

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|---|---|----------------------|
| In the Matter of |) | |
| |) | |
| Numbering Resource Optimization |) | CC Docket No. 99-200 |
| |) | |
| Connecticut Department of Public Utility |) | RM No. 9258 |
| Control Petition for Rulemaking to Amend the |) | |
| Commission's Rules Prohibiting Technology- |) | |
| Specific or Service-Specific Area Code Overlays |) | |
| |) | |
| Massachusetts Department of Telecommunications |) | NSD File No. L-99-17 |
| and Energy Petition for Waiver to Implement a |) | |
| Technology-Specific Overlay in the 508, 617, 781, |) | |
| and 978 Area Codes |) | |
| |) | |
| California Public Utilities Commission and the |) | NSD File No. L-99-36 |
| People of the State of California Petition for |) | |
| Waiver to Implement a Technology-Specific or |) | |
| Service-Specific Area Code |) | |

JOINT COMMENTS OF CHOICE ONE COMMUNICATIONS INC.
AND GST TELECOMMUNICATIONS, INC.

Choice One Communications Inc. ("Choice One") and GST Telecommunications, Inc. ("GST"), by undersigned counsel, hereby files its Joint Comments regarding the Federal Communications Commission's ("FCC's" or "Commission's") Notice of Proposed Rulemaking ("NPRM") in the above-referenced proceeding. *In the Matter of Numbering Resource Optimization*, CC Docket No. 99-200, Notice of Proposed Rulemaking, rel. June 2, 1999 ("NPRM"). GST is a competitive local exchange carrier currently authorized to provide service in Arizona, California, Oregon, Utah, Texas, Hawaii, Idaho, Nevada, New Mexico and Washington. Choice One is a

competitive local exchange carrier currently authorized to provide service in Massachusetts, New York, Pennsylvania, New Hampshire and Rhode Island. As facilities based providers of local service, Choice One and GST are dependent upon access to numbering resources in order to expand their operations. Choice One and GST commend the Commission for recognizing the importance of allocating telephone numbering resources in an efficient, timely and competitively-neutral manner. Choice One and GST urge the Commission to ensure that it adopts numbering conservation measures that do not unfairly burden carriers seeking to enter local exchange markets. In furtherance of this policy objective, Choice One and GST support the development of a national policy to promote efficient stewardship of numbering resources. A national policy will maintain consistency and ensure that a uniform competitively-neutral standard of numbering conservation is adopted. Additionally, a national approach also eliminates many of the problems that have accompanied individual states' attempts to implement numbering conservation plans.¹

I. NUMBERING CONSERVATION SHOULD BE COORDINATED AT THE NATIONAL LEVEL

A. The NANPA Should be Given the Power to Ensure Compliance with the Numbering Allocation and Assignment Guidelines

Choice One and GST support the creation of an enforcement mechanism to ensure compliance on the part of all users of the numbering resource with all numbering utilization rules and guidelines. NPRM, ¶ 91. This enforcement mechanism must be uniform and consistent throughout the country so as to best support the objectives of a national number conservation policy.

¹ The FCC has conceded that there have been problems with some numbering conservation measures enacted by state commissions. See NPRM, ¶ 99 n. 185.

The North American Numbering Plan Administrator ("NANPA"), due to its role in number allocation and assignment, is currently in the best position to implement a national enforcement mechanism.

Choice One and GST oppose delegating such authority to the state commissions. State regulation in this area would create unacceptable confusion and uncertainty. The delegation of additional enforcement authority to fifty state commissions would destroy any uniformity in numbering conservation. In addition, state commissions would be under extreme pressure to deviate from national policy goals in order to achieve resolution of state numbering problems.

B. NXX Block Reclamation Should be Handled on a National Level

Choice One and GST strongly oppose any delegation of additional authority to state public utility commissions to order NXX block reclamation. *Id.*, ¶ 100. NANPA currently has the authority to reclaim NXX codes in accordance with number utilization rules and guidelines. The FCC's focus should be on strengthening and clarifying the NANPA's authority to reclaim NXX blocks. Additionally, all rules and guidelines regarding NXX block reclamation must be interpreted on a national scale so as to ensure consistency. Allowing 50 different regulatory bodies to reach inconsistent and possible contrasting outcomes is an inefficient and ineffective way to address NXX block reclamation.

II. NUMBERING CONSERVATION MUST BE ENACTED IN A COMPETITIVELY NEUTRAL FASHION

A. The FCC Should Reject Any Proposals that Would Unduly Burden New Entrant's Ability to Compete or Enter New Markets

The FCC must not adopt any provisions that would make it more difficult for competitive local exchange provider to obtain NXX numbers. Choice One and GST strongly object to the FCC's suggestion that applicants be required to provide additional information to prove their readiness to begin service in order to obtain their initial NXX codes. NPRM, ¶ 58. This proposal unjustifiably targets new entrants, because new entrants are the only providers that will be requesting initial codes, and would interfere with their ability to enter new markets. The proposal to require additional information in order to obtain initial NXX codes is also unnecessary because a system is already in place to reclaim unused NXX codes should they go unused. Reclaiming unused numbers is the most competitively neutral method of ensuring that NXX codes are activated. Increasing the regulatory hurdles involved in obtaining initial codes will only discourage carriers from serving new markets. The adoption of more stringent requirements for initial NXX codes will also suppress competition without having any long-term benefits to numbering conservation.

The FCC also has proposed increasing the requisite showing of need in order to obtain growth codes. *Id.*, ¶ 60. As with its proposal relating to initial codes, this proposal unfairly burdens competitive providers and discourages entry into new markets. Incumbent Local Exchange Carriers ("ILECs") have an established customer base resulting in higher utilization rates than new entrants. *See id.*, ¶ 65. Any threshold based upon utilization rates would have to be structured in a way that

is competitively neutral in its impact on both ILEC and competitive providers. The Commission has itself recognized that "[i]mposing the same utilization requirements on carriers with a small market presence as on those with a much larger presence may discourage market entry and competition, as well as diminish a smaller or newer carrier's ability to react to market demands." *Id.*, ¶ 68. Any system based upon utilization rates would have to take into consideration the market presence of the applicant in order for the system to be competitively neutral.

Even if fashioned in a competitively neutral way, Choice One and GST believe that utilization rates are inappropriate because they are a measure of historical need, not future demand. Regardless, any system that makes it more difficult to obtain NXX codes would have very limited long term benefits due to the fact that codes are reclaimed from providers if they remain unused. Therefore, Choice One and GST would discourage the FCC from attempting to create a system that would award growth codes based upon utilization rates.

Choice One and GST also oppose any plan that would establish a price-based allocation scheme for numbers. *Id.*, ¶ 225. Making a carrier pay for numbers would create a significant barrier to entry, particularly in the current system which requires a new entrant to acquire large amounts of numbers in order to establish a footprint. A price-based allocation system would have a disproportionate effect of lesser capitalized start-up companies. The net effect would be to strengthen incumbent providers market hold while stifling competition. The Commission should refuse to adopt any proposals that would interfere with new entrants abilities to effectively compete.

B. Reporting Requirements Must Not be Crafted in a Way That Places an Undue Burden Upon New Entrants or Competitive Providers

While we agree that accurate data is important in order to maximize the benefits of number conservation measures, we do not support any reporting requirements that would create an undue burden on new entrants. We agree with the conclusion of the FCC that the NANPA, rather than the states, should serve as the single point of collection for telephone number usage and forecast data. *Id.*, ¶ 73. Reporting with the NANPA is the least burdensome alternative and is consistent with our belief that numbering issues should be addressed on a national level. In addition, Choice One and GST have concerns over state commissions' ability to protect the confidentiality of data submitted to it. *Id.*, ¶ 78. Only states that have a legally enforceable confidentiality agreement in place should be able to obtain carrier specific data.

Choice One and GST oppose the FCC's proposal to require carriers to submit reports on a quarterly, instead of annual, basis. *Id.*, ¶ 77. The administrative burden on the carrier associated with these reports is substantial, as is the corresponding burden on NANPA to review and evaluate these reports. Many smaller new entrants may not have the resources necessary to prepare quarterly reports, nor is it likely that NANPA would have adequate time to analyze and respond to reports submitted on a quarterly basis, particularly if the reports become more detailed and complex as a result of this NPRM.

C. The FCC Must to Act Cautiously with Respect to Number Reclamation Timetables to Avoid Unduly Harming New Market Entrants

Reclamation of unused NXX blocks is an effective way to conserve numbers. Choice One and GST believe it is not necessary for the FCC to adopt policies that would interfere with new

entrants' ability to compete in order for the FCC to create an effective system of NXX reclamation. Specifically, Choice One and GST oppose the FCC's proposal to reduce the amount of time for initial code reservations from 18 months to 3 months and to reduce the amount of time of potential extension of that reservation from 6 months to 30 days. *Id.*, ¶ 99. New entrants face numerous uncertainties and unforeseen difficulties during their initial start-up phase. The FCC should not make the burden on new providers even greater by creating a stringent timetable for activation of NXX codes that would give new entrants only a 60 day margin for error. Incumbent providers do not face as many obstacles to entry and therefore would not be as seriously affected by the shortening of the period in which NXX codes must be activated. The current system that allows the NANPA discretion to determine the length of any extensions of activation deadlines is more competitively neutral since the NANPA has the ability to take into consideration all the factors which may have caused the delay in NXX activation. Taking away NANPA's discretion in issuing extensions of time could hinder new entrants' ability to enter the competitive marketplace. Specifically, these provisions may interfere with a carrier's ability to attract and retain customers by limiting a carrier's ability to provide marketable service due to a lack of numbers.

D. All Cost Recovery Must Be Performed on a Competitively-Neutral Basis

Choice One and GST support the FCC's conclusion that the costs of the administrative solutions to number optimization be born by telecommunications carriers on a competitively neutral basis. *Id.*, ¶ 104. The NANPA fund formula is competitively neutral and does not appear to significantly affect any carrier's ability to compete with other carriers for customers in the marketplace. As all carriers benefit from numbering conservation efforts, all carriers should bear

a proportionate share of paying for numbering conservation. Choice One and GST, therefore, support the use of the NANPA fund formula to determine costs.

III. CONCLUSION

Choice One and GST encourage the Commission to continue its effort to develop an efficient system of numbering conservation. In order to create consistent interpretations of rules and guidelines, Choice One and GST urge the FCC to coordinate enforcement and implementation power at the national level. The FCC must also ensure that all numbering utilization regulations be crafted in a competitively neutral manner. New entrants should not be unfairly burdened with disproportionate costs or regulations that interfere with its ability to complete.

Respectfully submitted,



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